

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform	)	WC Docket No. 11-42
and Modernization	)	
	)	
Telecommunications Carriers Eligible	)	WC Docket No. 09-197
for Universal Service Support	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

**EMERGENCY PETITION FOR INTERIM WAIVER OR,  
IN THE ALTERNATIVE, TO CONDUCT MARKET TEST**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, and pursuant to Section 1.3 of the Commission’s rules,<sup>1</sup> petitions the Commission on an emergency basis for an interim waiver of Section 54.408(b) of the Commission’s rules.<sup>2</sup> In support of that request, TracFone states as follows:

In the 2016 Lifeline Modernization Order,<sup>3</sup> the Commission promulgated a series of minimum service standards for Lifeline services. Those standards, codified at Section 54.408 of the Commission’s rules, establish service standards for fixed and mobile Lifeline service and for voice and broadband service. Those standards are scheduled to increase annually. The next scheduled increase in the minimum service standard is imminent. As of December 1, 2017, the minimum service standard for mobile voice service will increase from 500 minutes per month to

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 54.408(b).

<sup>3</sup> Lifeline and Link Up Reform and Modernization, et al (Third Report and Order, Further Report and Order, and Order on Reconsideration), 31 FCC Rcd 3962 (2016).

750 minutes per month; the minimum standard for mobile broadband will increase from 500 MB per month to 1 GB per month.<sup>4</sup>

By letters submitted September 7 and September 20, 2017, TracFone requested that the Commission clarify that the rules allow Lifeline providers to meet the minimum standards through a “units” proposal. TracFone proposed to provide each of its Lifeline customers with 1,000 units per month, with each unit equating either to one minute of wireless voice service or 1 MB of mobile broadband data service. How Lifeline customers use their monthly allotment of units would be for the customer to decide, and could change monthly, depending on each subscriber’s current needs and preferences.

In those letters, TracFone noted that Commissioner Mike O’Rielly had articulated the very concern which led to TracFone’s proposal. In his dissenting statement to the Lifeline Modernization Order, Commissioner O’Rielly stated as follows:

Some recipients might want a broadband connection to fill out a job application. But others might just want a simple voice service to use in case of an emergency – the original purpose of the [Lifeline] program. The Commission calls such basic offerings “second class” service, but I imagine that those who will end up with no service at all might call them a Lifeline.

TracFone, as the nation’s leading provider of Lifeline service, knows that many of its subscribers utilize the mobile broadband service mandated by the Lifeline Modernization Order. It also knows that many others continue to rely on their Lifeline service to provide them with affordable voice telephone service. The premise upon which the units plan is built is that consumers should choose how to use their supported service to meet their current needs. For that reason, TracFone was gratified that the Commission will consider a proposal at its November 16 agenda meeting which, *inter alia*, invites comment on the units proposal as part of a notice of

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<sup>4</sup> 47 C.F.R. § 54.408(b)(2)(ii)(B) (voice) and § 54.408(b)(2)(3)(ii) (mobile broadband).

proposed rulemaking.<sup>5</sup> During that proceeding, commenters will have an opportunity to demonstrate that a units plan as proposed by TracFone could responsibly empower Lifeline consumers to obtain the highest value for their Lifeline benefit through consumer choice, and that a units proposal complies with existing Commission rules as asserted by TracFone in its letters. Alternatively, the Commission may determine to revise its rules to explicitly permit Lifeline providers to offer consumers quantities of units in order to comply with the minimum service standards.

There is, however, a short term problem. The rulemaking contemplated by the November 16 action will take many months. The next increase in the minimum service standards takes effect December 1, 2017 – less than four weeks from the date of this emergency petition. Comments on the proposal will not be received until long after that date. Accordingly, TracFone respectfully requests that the Commission permit TracFone to implement the units plan described in its September 7 and September 20 letters on an interim basis pending completion of the rulemaking proceeding.<sup>6</sup> Grant of an interim waiver as requested or issuance of a declaratory ruling that the units plan complies with Section 54.408(b) would be without prejudice to the Commission’s rulemaking proceeding.

There is another reason why allowing TracFone to meet the December 1, 2017 increased minimum service standards by providing 1,000 units per month to its subscribers would serve the public interest. It would give TracFone and the Commission an opportunity to study consumer

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<sup>5</sup> See Bridging the Digital Divide for Low-Income Consumers, et al (*Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, released October 25 as a draft for tentative consideration at the Commission’s November meeting), at ¶ 75.

<sup>6</sup> TracFone has proposed to provide 1,000 units which can be used either for voice or mobile broadband. If all the units are used for mobile broadband, the 1,000 MB (1 GB) would meet the December 1 minimum standard. If all the units were used for voice service, the 1,000 minutes would exceed the December 1 minimum standard of 750 minutes.

response to the plan. How do consumers utilize their units? What portion is used for mobile broadband data? What portion is used for voice telephone service? Do consumer preferences and usage preferences vary by age, residence or other demographic? Does the ability to use allotments of units either for voice or broadband impact consumer demand for Lifeline service? These and other questions can be studied by such a units plan test.

Following the Commission's 2012 Lifeline Reform Order,<sup>7</sup> the Commission approved a series of Lifeline broadband market experiments to be conducted by several providers. TracFone participated in that program and conducted a market test. As required of all participants, TracFone submitted a detailed report of its market test and shared with the Commission data which it compiled from that test. The Commission had the benefit of that information in considering whether and how to modernize Lifeline to support broadband in 2016. TracFone believes that the results of its test of a units proposal would be similarly invaluable as the Commission considers such a plan as part of its new rulemaking. More than a half century ago, Judge Harold Leventhal, writing for the U.S. Court of Appeals for the District of Columbia Circuit, insightfully observed that for some issues, "a month of experience will be worth a year of hearings."<sup>8</sup> This is such a situation. By allowing TracFone to meet the December 1, 2017 minimum service standards by providing Lifeline customers with 1,000 units as proposed in its September 7 and September 20 letters, TracFone and the Commission will obtain the kind of real world information which can only be obtained through such a market test. That information will be of material assistance to the Commission in evaluating whether the goals and purposes of the Lifeline program can be advanced by Lifeline providers delivering specified quantities of units to their subscribers.

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<sup>7</sup> Lifeline and Link Up Reform and Modernization, et al, 27 FCC Rcd 6656 (2012).

<sup>8</sup> American Airlines v. CAB, 359 F.2d 624, 633 (D.C. Cir. 1966).

For the reasons stated herein, TracFone respectfully requests that the Commission grant it a waiver or such other authority as necessary to enable it to commence providing 1,000 units per month on an interim basis to enrolled Lifeline subscribers on December 1, 2017.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



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